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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,752	08/20/2003	Yasuhiro Kasahara	NAKAM-64801	9161

24201 7590 01/10/2006

FULWIDER PATTON  
6060 CENTER DRIVE  
10TH FLOOR  
LOS ANGELES, CA 90045

EXAMINER

ROY, ANURADHA

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,752

Applicant(s)

KASAHARA, YASUHIRO

Examiner

Anuradha Roy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 23-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/19/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Restrictions

Claims 1-21 & 23-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 28, 2005.

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawanishi et al. (European Publication No. EP1132046) in view of Yoshimura et al. (US Publication No. 2001/0053883).

Kawanishi et al. discloses an apparatus for judgment of physical constitution and physical strength for a person under test, comprising:

- a first input unit (3a-3d, 6a-6d, & 11) ; a second input unit (4); a third input unit (7); a fourth input unit (16); (In regard to the inputs, the Examiner contends there is no structure associated with each

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of the input in claim. Thus the inputs could range from a touch screen input, to electrodes, or it could involve a keyboard.)

- a judgment unit [0020]; and a display unit (5 & 10),
- wherein said first input unit (3a-3d, 6a-6d, & 11) is capable of entering a body fat rate [0026] of the person under test;
- said second input unit (4) is capable of entering BMI (Body Mass Index) [0026] of the person under test;
- said judgment unit [0020] judges the physical constitution and physical strength based on the data from at least one input units [0021]; (Examiner contends that there is a lack of criticality in a combination of all the inputs, since the claim states the judgement unit needs, at the minimum, only one input unit.)
- and said display unit (5 & 10) displays the result of judgment [0011] performed by the judgment unit [0020].

As mentioned above Kawanishi does disclose a third (7) and fourth (16) input units. Kawanishi further discloses ratios of fat mass in a trunk to fat mass in lower limbs and weight of upper-half of body to volume of muscle in lower limbs ([0011] & Figure 3). However, Kawanishi does not specifically disclose an age based on these physical measurements. (It is noted that in regards to the "Proportion Age" and the "Physical Strength Age," the Examiner contends that the Applicant has failed to define these specific variables within the claim, thus providing a lack of criticality to these variables.)

Yoshimura et al., however, does teach of a health indicator measuring device determining an age based on physical indicators ([0014], [0021], [0022], [0077]). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention in view of Yoshimura et al. to provide an age correlating with the certain physical measurements with Kawanishi in order provide a health assessment for an individual "in a simple and easy manner" [0014].

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Silver (US Patent No. 6,269,339) discloses a system for developing a wellness plan, which involves calculating a "physiological age" based on a person's physical assessment. Heymsfield et al. (US Patent No. 6,468,209) discloses an apparatus for estimating body fat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anuradha Roy whose telephone number is (571) 272-6169 and whose email address is anuradha.roy@uspto.gov. The examiner can normally be reached between 8:00am and 4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

~AR~

  
MICHAEL W. WINDERBURG  
PATENT EXAMINER  
EBC CENTER 3700